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Introduction :

It may seem funny, but, all the same the story has much significance. The story runs: "When the great Omar performed the *tawaf* around the *Ka'ba* in Mecca and kissed the black stone there enshrined, he is said to have declared: 'I know thou art a stone, powerless to help or hurt, and I would not have kissed thee if I had not seen the envoy of God kiss thee'.[1]" Even so, most Judges profess to follow precedents, though some of them try to find a way out where the previous decisions are not in tune with the facts before them. As observed by Sir Leslie Scarman, Chairman of the English Law Commission: "The function of the Court is to decide cases. In doing so, the Courts exercise, to the great advantage of the law, a creative function. For it is not possible to interpret and apply the law without at the same time developing it." So, all in all, whatever the technique adopted, there is a development of the law through the decisions of the Superior Courts of the land. During the year 1973, about 20 decisions of the Supreme Court have been reported in the columns of this Journal besides almost all the important decisions of our High Court. An attempt is made hereunder to advert briefly to the course of development of law in and the points of law emerging from the decisions rendered under some of the well-known and fairly significant titles of law.

Courts : Their jurisdiction, powers and duties:

In *Daivasigamani Udayar* v. *Rajarani Ammal*[2], it is held that having regard to the general principle that acts of Court including its delays ought not to prejudice and cause hardship to any party, the power of the Court to make an interim order is implicit, ancillary and a necessary corollary to the power to entertain a suit and pass final orders therein and that the civil Court has jurisdiction to grant interim maintenance pending a suit for maintenance under section 18 of the Hindu Adoptions and Maintenance Act, 1956. *Krishnammal* v. *Mahadeva Iyer*[1], decides that a civil Court has no jurisdiction to set side or vary an order passed by a criminal Court under section 488, Criminal Procedure Code, though once a competent civil Court has given a de ision upon the liability for maintenance or the *quantum* thereof, the criminal Court is statutorily bound under section 489, clause (2) of that Code to cancel or vary its own order in accordance with the decision of the civil Court. In *Gopalan* v. *Commissioner of H. R. and C. E.*[2], the Supreme Court points out that the uniform practice in the matter of appreciation of evidence has been that, if the trial Court has given cogent, detailed reasons for not accepting the testimony of a witness, the appellate Court in all fairness ought to deal with those reasons before proceeding to form a contrary opinion about accepting the testimony which has been rejected by the trial Court. *Swamikannu Pillai* v. *Safoorama Bibi*[3], holds that the Court, exercising its jurisdiction under the provisions of the Guardians and Wards Act, has to act only to safeguard the interest of the minor and cannot pass an order against the interest of a minor at the instance of a third person and the Court has no jurisdiction to direct the guardian to continue a petition against his will, though the Court is empowered

1. *See* Essay on "Case Law and *Stare Decisis*" by Max Radin quoting the story in 33 Columbia Law Review, p. 199.
2. (1973) 1 M.L.J. 383.

1. (1973) 1 M.L.J. 344.
2. (1973) 1 M.L.J. (S.C.) 43.
3. (1973) 1 M.L.J. 57.

to make a general direction to the guardian *suo motu* in the course of his administration in the interest of the minor and his estate.

Constitutional Law :

In *R. K. Manufacturers* v. *M. M. Trading Corporation*[1], it is pointed out that it is only in cases where administrative orders take away the rights of citizens that Courts have examined the situation to find that such an order should satisfy the essential principles adumbrated in the Constitution, such as avoidance of discrimination, adherence to the principles of natural justice, etc.; that in the very nature of things a classification is inherent in the application of laws; that if the classification made in the exercise of power conferred by law is reasonable and if the differentia is intelligible and bears a nexus to the object of the system, then such a differential treatment which is involved in the classification is never understood as discriminatory; and, it is always accepted that a doctrinaire approach in the matter of construction and elucidation of Article 14 of the Constitution has to be avoided. In *D. Rama Raju* v. *State of Andhra Pradesh*[2], the Supreme Court makes it clear that the object of the Andhra Pradesh (Krishna and Godavari Delta Area) Drainage Cess Act, 1968, is to raise funds for the implementation of schemes to secure protection of the lands in the deltaic area; that as the Act is intended to benefit the lands in the divisions of such area the levy of cess at a uniform rate for each acre of land in a division cannot be considered to offend the principle of equality; that the floods strike equally all the lands in the area and make no discrimination so far as the quality and productive capacity of those lands are concerned; that in the circumstances, it appears to be just and reasonable that each acre in a division should bear equal burden of the amount which is sought to be raised to fight the danger of floods and provide for an efficient system of drainage; that as the cost of the drainage scheme varies in the different divisions, the rate of cess has been fixed at different rates for the divisions keeping in view the cost of the drainage scheme in each division; that the differential in the cost of drainage schemes for the four divisions has been properly reflected in the varying rates of cess for each division; and, that the rate of cess prescribed for each division under section 3 of the Act has a rational nexus with the object of the Act and is based on intelligible differentia and the provisions of the Act are not violative of Article 14. *Indian Express* v. *Chief Presidency Magistrate*[1], decides that the laying of information before the police by the Company Law Board on a perusal of the inspection report under section 209 (4) of the Companies Act is necessarily and properly required to carry into effect the purpose behind the formation of the Board; that there is nothing in that Act either expressly or impliedly prohibiting the Central Government from laying information to the police in lieu of ordering an investigation under section 237 (*b*) of the Act; that no obligation is cast on the Central Government to follow the procedure starting with an investigation under section 237 and culminating in a prosecution under section 242 and, there is no prohibition of the Central Government from laying the information before the Police if a cognisable offence under the Penal Code is disclosed on an inspection made under section 209 (4); that it cannot be said that the procedure laid down under the Companies Act is more advantageous to the persons involved than the procedure laid down by the Criminal Procedure Code and that, the act of the Central Government or the Company Law Board in laying the information to the police is not violative of Article 14 of the Constitution. *Kannappa Chetti* v. *State of Tamil Nadu*[2], holds *inter alia* that the Tamil Nadu State Carriages and Contract Carriages (Acquisition) Act of 1973 constitutes discriminatory legislation because it discriminates between bus operators operating in the particular State where such legislation is sought to be introduced and operators outside that State. *Somasundaram* v. *Union of India*[3], lays down that the mere fact that one scale of pay was

1. (1973) 2 M.L.J. 389.
2. (1973) 1 M.L.J. (S.C.) 7.

1. (1973) 2 M.L.J. 469.
2. (1973) 2 M.L.J. 212.
3. (1973) 1 M.L.J. 15.

applied in one Union Territory to a post designated in a particular way does not mean that the same scale of pay should be applied to a post designated likewise in another Union Territory; that merely because a particular post is designated in the same way in two Union Territories it does not mean that the same scale of pay should be applied to both the posts irrespective of all other considerations and there is no room to warrant the contention that there has been denial of equality of opportunity or that there has been denial of equal protection of the laws. *State of Tamil Nadu* v. *Chandrasekharan*[1], points out that though "market value" may be a varying factor and arithmetical accuracy is impossible, still, the expression is not so uncertain or arbitrary as to make the mention of 'market value' in the place of 'consideration' in an instrument for purpose of levy of duty, by the Indian Stamp (Madras Amendment) Act, 1967, violative of Articles 14 and 19 (1) (*f*) of the Constitution and that the adoption of a uniform standard for assessment of the quantum of the duty for sale, exchange and gift will not be hit by those Articles. In *Director of Industries and Commerce* v. *Venkata Reddy*[2], the Supreme Court holds that Article 16 (3) confers no less power than Articles 245-246 do read with List I and List III; that the Mulki Rules forming part of the Hyderabad Civil Service Regulations prescribing requirements as to residence within the whole of the Hyderabad State are saved and continued in force by Article 35 (*b*); and that it cannot be said that the impugned Mulki Rules could not be provided by Parliament under Article 16 (3). *Abdul Azeez Sahib* v. *Union of India*[3], decides that sections 17 to 23 of the Beedi and Cigar Workers (Conditions of Employment) Act are for the benefit of a large body of workers employed in the industry and, therefore, the restrictions have been imposed in the interests of the general public, as contemplated by Article 19 (6), that it cannot be contended that such a welfare legislation for the benefit of labour cannot be undertaken within the scope of Article 19 (6), and that simply because

1. (1973) 2 M.L.J. 19.
2. (1973) 1 M.L.J. (S.C.) 49.
3. (1973) 2 M.L.J. 126.

the employers will have to incur additional expenses for providing benefits to the employees which are admittedly in the interests of the general public it cannot be contended that the provisions of the Act are violative of the fundamental right of the employers to carry on their business or that they are in excess of the permissible limits under Article 19 (6). *Kannappa Chettiar* v. *State of Tamil Nadu*[1], expresses the view that Article 19 (1) (*g*) confers a right and not an obligation; that the right to carry on a business implies a right of the owner of the business to carry on the same in the manner that he likes including the right to close down when he chooses if such business does not yield any profits; that the right of a State to carry on trade or business has been recognised under Article 298 and the authority to exclude competition in the field of such trade or business was derived from Entry 21 of List III of the Seventh Schedule and the exercise of that power was protected under Article 19 (1) (*g*) or Article 19 (6) (*ii*); that the law creating a State monopoly as such does not violate Article 19 (1) (*g*) because it leaves untouched the right of the citizen who had hitherto been carrying on his business to carry on his business in other spheres; but when a motor vehicle with which the citizen carries on his business of plying for gain is itself taken away along with the equipment, spares, tools and also the workshop leaving no trace of the business which hitherto he had been carrying on, his right to carry on his business is infringed and the legislation which throws him out of the business cannot be protected under Article 19 (6) of the Constitution; and the requirement that the vehicle should be sold only to the Government and to none else at a certain price results also in the imposition of unreasonable restrictions on the permit-holder's right to carry on business and cannot be protected under Article 19 (6) of the Constitution. In *Seshammal* v. *State of Tamil Nadu*[2], the Supreme Court makes it clear that the appointment of an archaka in a temple is a secular act, that after his appointment the archaka performs worship is no ground for holding that the appointment is either

1. (1973) 2 M.L.J. 212.
2. (1973) 1 M.L.J. (S.C.) 58.

a religious practice or a matter of religion and that the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1970, doing away with the hereditary right of succession to the office of archaka does not violate Article 25 or 26 of the Constitution of India and is a valid piece of legislation. *Gopalachari* v. *State of Tamil Nadu*[1], points out that levy of assessment on inam land does not amount to resumption of the inam and does not result in the abrogation of the inam tenure; that by virtue of retrospective effect given to it the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1969, formed part of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act of 1963, which related to the acquisition of the rights of landholders in inam estates in the State of Madras and introduction of ryotwari settlement in the said estates; and that Article 31-A of the Constitution, therefore, saved the impugned Act from the attack of constitutional transgression based on Articles 19 and 31. *Kannappa Chetti* v. *State of Tamil Nadu*[2], makes it clear that what is meant by "material resources" in Article 39 is the same as "natural resources"; that to get at the meaning of the words "material resources", if the entire clause (*b*) of Article 39 is taken into account, it is obvious that "the material resources" thereunder belonged to the community but owned by others whose control has become necessary to subserve the common good; that such resources have to be acquired and distributed among members of the community; but, motor vehicles running in the State cannot be said to belong to the community. *Doraiswami* v. *Accountant General*[3], lays down that a statutory rule cannot be amended or superseded by an administrative instruction; that any rule relating to conditions of service including a rule touching upon the question of promotion in service, after the commencement of the Constitution can only be made in the manner indicated by Article 148 (5); that the modification to the existing law can be brought about also only in the aforesaid manner

1. (1973) 1 M.L.J. 90.
2. (1973) 2 M.L.J. 212.
3. (1973) 2 M.L.J. 43.

and that, if there be any modification by a process other than the one contemplated in Article 148, it would not be valid and operative. *Mathialagan* v. *Governor of Tamil Nadu*[1], holds that taking Articles 154 (1), 162, 163 (1), 164 (1) and (2) of the Constitution together it is clear that though the executive power of the State is vested in the Governor and it shall be exercised by him either directly or through officers subordinate to him, he can do so only in accordance with the Constitution, that is to say, with the aid and advice of the Council of Ministers, and this is so in respect of all the functions of the Governor, subject to the exception in Article 163 (1); that the executive power is, in substance and factually, exercised by the Council of Ministers which is collectively responsible to the Legislature and not to the Governor; that the exception in Article 163 (1) has reference only to those functions of the Governor which he is expressly required by or under the Constitution to exercise in his discretion and that has reference only to the two instances of functions of the Governor in Schedule VI to the Constitution; that the exercise of the function of the Governor in proroguing or dissolving the Assembly under Article 174 is not a function which he can exercise in his discretion, that is to say to the exclusion of the ministerial advice; and since that matter is not covered by the exception to Article 163 (1), in the matter of prorogation the Governor is bound by the advice of the Council of Ministers. *Narayanaswami* v. *Pannirselvam*[2] makes it clear that a candidate from the graduates' constituency of a Legislative Council of a State need not possess the qualification of having graduated; that the plain and ordinary meaning of term " electorate " in Article 171 (3) (*b*) is confined to the body of persons who elect; that it does not contain within its ambit the extended notion of a body of persons electing a representative from amongst themselves, that the term "electorate" in Article 171 (3) could not by itself impose a limit upon the field of choice of members of the electorate by requiring that the person to be chosen must also be a member of the electorate; that it is not possible

(*to be continued*)

1. (1973) 1 M.L.J. 131 (F.B.).
2. (1973) 2 M.L.J. (S.C.) 1.

to say from Article 171 that the second chambers established in nine States in India were meant to incorporate the principle of "functional" or "vocational" representation advocated by the Guild-Socialist and Syndicalist schools of political thought; that all that can be inferred from the Constitution is that additional representation or weightage was given to persons possessing special types of knowledge and experience by enabling them to elect their special representatives also for Legislative Councils; that the concept of such representation does not carry with it, as a necessary consequence, the further notion that the representative must also possess the very qualifications of those he represents; and that the language as well as the legislative history of Articles 171 and 173 of the Constitution and section 6 of the Representation of the People Act, 1951, enable us to presume a deliberate omission of the qualification that a representative of the graduates should also be a graduate. *Mathialagan* v. *Srinivasan*[1], decides that Article 175 (2) does not clothe the Legislative Assembly summoned after a prorogation with a special garb of identification nor impress it with a badge of singularity apart from normal; that the message of the Governor under Article 175 (2) which is a directive to all concerned is at once a mandate and a mandate pregnant with details as to the subjects to be discussed in the Assembly Session; that where the agenda of the summoned Assembly had been fixed by the Governor under Article 175 (2) it was the duty of the Speaker to obey the mandate and act in accordance with the itemised agenda therein; that the majority referred to in Article 179 (*c*) cannot refer to the majority amongst all the members present or not inside the House but means the members present in the House; that the Legislative Assembly of a State is the function source of its power and the rules framed under Article 208 being the creatures of such power are susceptible to modification or deviation at the discretion of the majority of the members of the Assembly; that if the House is prompted to deviate from the rules of procedure for purposes of managing its internal affairs as the situation requires it the hands of the process of Court cannot extend so as to catch the alleged impropriety therein and deal with it as if it is justiciable; and that even if there has been any irregularity in the procedure adopted by the House, such a scheme not having any impact upon the competency of the Legislature to act and decide or on any fundamental right of a citizen or the substantive law spoken through its Articles in the Constitution is beyond the purview or scrutiny by a Court under Article 226. *Varadaraja Goundar* v. *State of Tamil Nadu*[1], makes it clear that it is not in every case that the Court is bound to grant a writ; the party concerned must approach the Court for that remedy with all expedition, at any rate, before the other side has done something which it would be unfair to ask him to retrace. *Kamala* v. *Director of School Education*[2], holds that Rules under Article 226 have been invariably issued only in cases where the rights slope from the exercise of statutory power or a power attributable to a rule framed under a statute; but as long as such a power is not referable to any such provision of law and if it is not in dispute that such rights spring only from a contract of service, no rule in the nature of *certiorari* or any other rule under Article 226 can issue so as to set right grievances which arise from contracts simpliciter; and that in respect of all rights springing from a contract of service and particularly in contracts entered into between master and servant the Court cannot interfere with the orders passed by the authorities who administratively function to deal with such situations and whose power is not derived from or attributable to any statute or statutory rule. *R. K. Manufacturers* v. *M. M. Trading Corporation*[3], expresses the view that the pricing policy for canalising agencies is a process which is undertaken by the Minerals and Metals Trading Corporation and the Union of India in their executive or administrative capacity; that so long as there is no malice caprice or arbitrariness in the process, no citizen can be aggrieved by the decision of such a public body; and where a price has already been fixed

1. (1973) 1 M.L.J. 357 (F.B.).

1. (1973) 1 M.L.J. 408.
2. (1973) 1 M.L.J. 68.
3. (1973) 2 M.L.J. 389.

in exercise of such administrative power, a writ of *mandamus* directing such a body to re-fix a price cannot be issued unless the price is for all purposes one which is unreasonable, unfair and hopelessly discriminatory. *Jayaraj* v. *Ponnuswami*[1] states that the jurisdiction of the High Court under Article 227 is only administrative and where a finding on a question in regard to an election is a question of fact and is held by the Tribunal to be correct, it cannot be attacked in a Revision Petition under Article 227. *Gouthamchand Jain* v. *State of Tamil Nadu*[2], holds that the entrustment order of the President of India under Article 258 (1) entrusting the Government of Tamil Nadu with the executive power of the Union in respect of lotteries organised by that State carries with it all powers which the State Government may take to realise the maximum collection and that, having regard to the scope of the delegated power, the State Government was competent to pass an order prohibiting the sale within the State of Tamil Nadu of all Government raffle tickets of States other than those of Tamil Nadu. *Mathialagan* v. *Governor of Tamil Nadu*[3], points out that in proroguing the Legislative Assembly the Governor was bound to act by the aid and advice tendered by the Chief Minister and no lack of *bona fides* could be imputed to him in acting on such advice; that Article 361 (1) accords the Governor absolute immunity and he cannot be made by any Court answerable to it for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of bis powers and duties. *Gouthamchand Jain* v. *State of Tamil Nadu*[2], lays down that though Entry 40 of List I in Seventh Schedule and Entry 34 of List II of the Constitution overlap to some extent, in view of the specific entry relating to lotteries organised by the Government of India or the Government of a State (Entry 40 of List I) it is only the Union Parliament that has power to *legislate* on that subject and the language of Entry 40 itself presupposes that a State has power to "*organise and conduct* a lottery; hence a lottery organised by the State would be lawful. *Soundramman Textiles* v. *Collector of Customs*[1], expresses the view that the levy of countervailing duty on import of art silk yarn under section 2-A of the Indian Tariff Act, 1934 read with section 22 of the Finance Act of 1963 was valid and constitutional in view of the provisions of Article 248 and Entry 97 of List I of the Seventh Schedule of the Constitution. *Mayavaram Financial Corporation Ltd.* v. *Reserve Bank of India*[2], holds that the provisions in Chapter III-B of the Reserve Bank of India Act, in pith and substance, relate to control of currency by the Reserve Bank and fall under Entries 38 and 36 of List I of the Seventh Schedule and they do not in any way trench upon Entry 30 of List II; that the contract entered into by a foreman conducting chit funds with the subscriber is a special contract falling under Entry 7 of List III of the Seventh Schedule ; that the provisions do not trench upon Entry 26 of List II and chit funds do not fall under Entry 26.

Labour and Industrial law:

In *Vallamalai Estate* v. *Workers of Vallamalai Estate*[3], it is pointed out that the contention, that a joint application for reference under section 10 (2), Industrial Disputes Act, 1947, being as it were on the basis of a consent or concession on the part of the parties thereto that an industrial dispute existed or was apprehended, either of the parties would be estopped from raising the question of jurisdiction before the presiding officer to adjudicate on the reference, is untenable; that it is basic for the jurisdiction of the presiding officer to adjudicate upon a reference that there should be an industrial dispute either in existence or apprehended; that neither consent nor waiver can be a substitute for jurisdiction; that it is open, therefore, to the presiding officer on a reference always, if the parties before him so desire, to decide as a preliminary issue as to whether the facts existed to warrant the invoking of his inherent jurisdiction, notwithstanding that the reference was made on a joint

1. (1973) 2 M.L.J. 379.
2. (1973) 2 M.L.J. 27.
3. (1973) 1 M.L.J. 131 (F.B.).

1. (1973) 2 M.L.J. 413.
2. (1973) 2 M.L.J. 72.
3. (1973) 1 M.L.J. 292.

application under section 10 (2) of the Act; that while an industrial dispute should be among other things between the management and workmen, the dispute need not be connected with any workman; and that what the definition of the expression 'industrial dispute' says is that it may be connected with the employment or non-employment or the conditions of labour of any person, not necessarily a workman.

Contracts and ancillary laws:

In *Maheswari Metals* v. *Madras State Small Industries Corporation*[1], it is held that where the document inviting tenders required the tenderer to quote the rates and make a deposit and also contained *inter alia* a clause that the successful tenderer was required to execute an agreement within ten days of the announcement of the acceptance of the tender for the fulfilment of the contract, once the tender was accepted there would be a concluded contract between the parties because all the material terms would become settled by that stage itself and it is not correct that till such an agreement was executed there was to be no contract. *Sivaramalinga Thevar* v. *Ahmed Haseem*[2], states that in the case of a contract for sale of a motor lorry, the lorry being movable property, the contract is completed on delivery of possession thereof; that the transfer of registry is not a condition precedent for payment of the balance of consideration; and that the passing of the title to the property does not depend upon the transfer of the certificate of registration. *Amaravathi Co-operative Sugar Mills* v. *Thirumalaiswamy*[3], holds that the fact that the parties to a contract have agreed upon a particular sum to be payable by the party in breach to the other party is no ground for holding that the party in breach must be compelled to pay the same to the other solely on this ground; that under section 73 of the Contract Act a party to a contract can claim compensation from the party in breach only if he proves that he has sustained loss or damage and that too only to the extent of such loss or damage suffered by him; that both under section 73 and section 75 a person will be entitled to recover compensation only if he has sustained loss or damage and the amount of compensation will be only to the extent of such loss or damage; that section 74 is more or less in the nature of an exception to section 73; that where a case falls within the scope of section 74, a claimant will be entitled to reasonable compensation irrespective of whether actual loss or damage is proved to have been caused to him or not; however, section 74 can apply only if in the contract a sum has been named as the amount to be paid in case of breach or if the contract contains any other stipulation by way of penalty; that when this test is satisfied and section 74 is attracted, the reasonable compensation cannot exceed the amount named in the contract or the penalty stipulated for; and that in such circumstances the amount named in the contract or the penalty stipulated for will be the maximum which a party will be entitled to by way of reasonable compensation. *Ramachandra Gowder* v. *Nanjappa*[1], expresses the view that the mere fact that a house was not shown in the account books as partnership property or that an arbitrator deciding disputes between the sons of another partner had proceeded on the basis that the house was the separate property of such partner will not alter the character of the property as partnership property where, in fact, the house had been acquired by a person and subsequent to his death it was demolished and reconstructed using partnership funds by agreement among the partners of the firm founded by the deceased and one of the partners was residing in the house throughout. *Veerappa Chettiar* v. *Kalidass Chettiar*[2], states that the liability created under section 32 (3) of the Partnership Act on a retired partner would not extend to his being liable to be adjudicated as an insolvent. *Subramani* v. *Kannappa Reddiar*[3] points out that it is settled law and beyond question that the provisions of sections 14 to 17 of the Specific Relief Act of 1877 are both positive and negative in their form, and taken together they constitute a complete code, within the terms of which relief by way of specific perfor-

1. (1973) 1 M.L.J. 209.
2. (1973) 2 M.L.J. 13.
3. (1973) 2 M.L.J. 361.

1. (1973) 1 M.L.J. 189.
2. (1973) 1 M.L.J. 239.
3. (1973) 1 M.L.J. 81.

mance must be sought if it is to be granted at all; that section 12 of the present Act has taken the place of sections 14 to 17 of the repealed Act of 1877; that even though assistance may be derived from a consideration of cases upon this branch of English jurisprudence, the language of the sections must prevail; and that this rule applies even now and section 12 (1) of the Act XLVII of 1963 which corresponds to section 17 of the repealed Act expressly declares "that the Court shall not direct specific performance of a part of a contract except as provided in section 12 sub-sections (2) to (4). *Subbiah Nadar* v. *Nallaperumal Pillai*[1], lays down that the possession of a tenant of the demised properties even after the expiry of the lease period is entitled to protection and if he is dispossessed without due process of law section 9 of the old Specific Relief Act (section 6 of the Specific Relief Act XLVII of 1963) can be invoked by such a tenant to recover possession even if the person who dispossessed him is the landlord. *Asirvatham* v. *Palaniraju Mudaliar*[2], makes it clear that where an endorsee for full value of a promissory note payable on demand was not aware and had no knowledge at the time of endorsement of any prior demand for payment by the original payee against the maker or of any payment by the latter, the endorsee must be deemed to be a holder in due course in view of sections 9 and 118 of the Negotiable Instruments Act; that such an endorsee's right to sue on the promissory note is not affected by section 59 of the Act; and that if the maker had made a payment to the original payee but did not make an endorsement thereof on the note itself thereby enabling the latter to endorse the note to another for full value, the maker alone should suffer the loss. *Verco Private Ltd.* v. *Newandram Naraindas*[3], decides that where the plaintiff admitted that after the promissory note was executed he inserted the rate of interest in the note the promissory note so altered was inoperative and could not be sued upon; and the last portion of section 87 of the Negotiable Instruments Act was inapplicable.

1. (1973) 1 M.L.J. 459.
2. (1973) 1 M.L.J. 443.
3. (1973) 2 M.L.J. 92.

Property law, Land Tenures, and related legislation:

In *Palanivelu* v. *Ouseph Mathai*[1], it is held that in the case of a surrender by a life-tenant in favour of the remaindermen, there is no transfer of property from the life-tenant and there is merely an effacement or extinguishment of the rights of the life-tenant with the result the rights of the remaindermen get accelerated, and the rights of the remaindermen are derived only under the document executed by the full owner; and, when a surrender deed is executed, full rights accrue to the remaindermen only in pursuance of the title derived under the settlement and the remaindermen do not derive any title from or through the life-tenant who makes the surrender. *Mohd. Sheriff Sahib* v. *Mumtaz Begum Sahiba*[2], states that for a transferee to invoke the principle contained in section 41 of the Transfer of Property Act, he must show: (*i*) that his purchase was from an ostensible owner of the property with the consent express or implied of the real owner; (*ii*) that he was a *bona fide* purchaser for value without notice of the title of the real owner, (*iii*) that he had made due and reasonable enquiries to ascertain that the transferor had the requisite power to make the transfer; and (*iv*) that he had acted in good faith, and that for this purpose the transferee must adduce acceptable evidence at the time of the trial that what he had averred in his written statement is true. *Guruswami Asari* v. *Raju Asari*[3], points out that section 45 of the Transfer of Property Act only states that the interest *inter se* as between the several joint purchasers of an immovable property will, subject to any contract between them, be in the proportion in which they were entitled to the consideration for the purchase, and has nothing whatever to do with the method of creating common ownership or the manner in which several persons can become common owners in respect of a single item of property. *Rajeswari & Co.* v. *Union of India*[4], decides that a transfer by a debtor of all his property to a particular creditor is not necessarily voidable under section 53 of the Transfer

1. (1973) 1 M.L.J. 264.
2. (1973) 1 M.L.J. 165.
3. (1973) 2 M.L.J. 203.
4. (1973) 1 M.L.J. 118.

of Property Act, even though under the insolvency law it may operate as a fraudulent transfer or a fraudulent preference and that the Union of India is not entitled to any relief under section 53 of the Transfer of Property Act. *Nagammal v. Ayyavu Thevar*[1], expresses the view that section 55 deals with the rights and liabilities of the buyer and seller both before completion and after completion of a contract of sale; that even if the buyer was aware of the defect in title of the vendor at the time of the contract, he will be entitled to claim a return of the purchase-money under section 55 (2); that section 55 (6) applies only to the rights of the parties prior to the execution of the sale deed; and that where the contract goes off by reason of the default on the part of the seller and without any default on the part of the buyer, the buyer does not lose his charge and ever since the amendment of section 55 (6) (*b*) in 1929, the charge can be enforced not only against the seller but against all persons claiming under him irrespective of notice. *Angu Pillai* v. *Kasiviswanathan Chettiar*[2], states that where the documents deposited along with the memorandum of deposit though not complete in themselves for holding the title, were undoubtedly documents relating to the property or in respect of the property, showing *prima facie* title to the same, namely: (*i*) the hundi towards the purchase price of the property; (*ii*) the agreement by the previous owner to convey the property; and (*iii*) a tax receipt in the name of the plaintiff's father, they constitute 'documents of title' within the meaning of section 58 of the Transfer of Property Act. *Kandaswami Mudaliar* v. *Palani Ammal*[3], holds that a usufructuary mortgagee cannot by a mere assertion of his own or by a unilateral act on his part convert his possession of a moiety of the property as mortgagee into that of an absolute owner; he can do so only if he had purchased the entire equity of redemption from the mortgagor. *Amina Bi* v. *Khamurinnisa*[4] decides that the continuance in possession of a mortgagee

1. (1973) 1 M.L.J. 273.
2. (1973) 1 M.L.J. 334.
3. (1973) 2 M.L.J. 457.
4. (1973) 2 M.L.J. 314.

after the period of redemption cannot necessarily be adverse to that of the owner; the question is always a question of animus or the intention of the parties concerned. *Kaliappa Nadar* v. *Amritavalavandammal*[1], holds that once one of the methods of service contemplated by section 106 of the Transfer of Property Act, namely, sending notice by post to the correct address of the tenant by the landlord is adopted a presumption follows not merely with reference to section 27 of the General Clauses Act, but also with reference to section 114 of the Evidence Act, that it had reached the addressee; the presumption is rebuttable and the tenant can show that he had actually no notice of the proceeding. *Sambandam Chettiar* v. *St. Francis Xavier's Church*[2], points out that under section 108 of the Transfer of Property Act, a lessee may, even after the determination of the lease, remove at any time while he is in possession of the property leased, all things which he has attached to the earth; that though the right to remove the building negatives the right to compensation, an option is given to the lessor either to take the building on paying compensation or, if he is unwilling to pay compensation to allow the lessee to remove the building. In *Natarajan* v. *Rani Kannuthayi*[3], it is held that under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, the compensation amount relating to buildings situate in an impartible estate notified under the provisions of the Act vesting in the landholder under section 18 (4) of the Act would continue to retain the character which originally the estate which it represented had; that if there is no anomaly in a building situate outside the limits of the estate continuing to have the character of impartibility there cannot be any anomaly simply because the building happens to be within the limits of an estate abolished under the Act; that section 45 (6) of the Act creates a fiction to the effect that the compensation amount should be divided as between the sharers as if the same belonged to the joint family consisting of them and a partition among them had taken place on the date of the notifi-

1. (1973) 1 M.L.J. 126.
2. (1973) 2 M.L.J. 2.
3. (1973) 2 M.L.J. 338.

cation; that such a fiction has to be given full effect to and once it is done, certainly the share of the compensation amount in the hands of the principal landholder could not be held to continue to possess the character of impartibility; that the repeal of the Madras Impartible Estates Act, 1904, under section 66 of the Estates Abolition Act of 1948, does not deprive the buildings falling within the scope of section 18 (4) of the Estates Abolition Act, of their impartible character; and the only way of reconciling section 18 (1) and section 18 (2) and section 3 (*b*) of the Estates Abolition Act, is to hold that the buildings as such do not vest in the Government under section 3 (*b*) and they vest in the Government only under section 18 (1) and section 18 (2).

Valliammal v. *Authorised Officer*[1], makes it clear that the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act of 1961 is not intended to fix the ceiling with reference to the lands held by any person at the time of the commencement of the Act alone but it also prohibits any person holding land in excess of the ceiling area on or after the commencement of the Act; the Act is also neither intended to nor in terms abrogates or prohibits inheritance subsequent to the commencement of the Act, but if the lands so inherited together with the lands already in the possession of the person exceed the ceiling area a duty is cast on such person to submit a return to the Authorised Officer in the prescribed form; if the person happens to be a female she has to file the return inasmuch as section 21 of the Act does not make any distinction between inheritance by a male or a female; that the definition of stridhana land in section 3 (42) of the Act could not always govern the interpretation without reference to the context; and that in the context of sections 5, 7 and 21 the properties inherited by females as stridhana property subsequent to the commencement of the Act are also entitled to the benefits of section 5 (4). *Venkataswami Naidu* v. *State of Madras*[2], expresses the view that the Ceiling on Land Act of 1961, in its defining section 3 (49) contemplates only a trust which is intended for public purpose of a religious or charitable or of an educational nature and if the main purpose was public purpose of a religious and charitable nature the exemption granted under section 73 will equally apply. *Krishnaswami Mudaliar* v. *Authorised Officer*[1], lays down that if the objection of a purchaser after the notified date has to be completely ignored the provision in section 10 (5) requiring the objections to be received from the objectors and passing orders after hearing the objections would be meaningless; hence the Authorised Officer would be acting within his power if he allots the land transferred to a third party after the notified date for valuable consideration within the ceiling area of the person submitting the return; that section 78 provides for appeal against an order passed by the Authorised Officer under section 10 (5) by the Government or by the person aggrieved by any such decision; and that the effect of section 10 (5) and section 78 is obviously to protect the interests of persons interested in the land described in the draft statement made by the Authorised Officer. *Kaliyaperumal Nattar* v. *Authorised Officer*[2], points out that the direction in section 23 of the Ceiling on Land Act of 1961, is to the Authorised Officer, that for the purpose of fixing, for the first time, the ceiling area of any person holding land on the date of the commencement of the Act in excess of 30 standard acres, he shall ignore any transfer, whether by sale or gift etc., effected on or after the notified date and before the date of the publication of the final statement under section 12 or section 14; that the section also does not say that the transfer by itself will be bad for any reason nor does it deal with the transferee's rights; that section 23 cannot be read or understood as conferring power upon the Authorised Officer to take land which has not vested in the Government as provided under the provisions of the Act, particularly section 18 (3), and then distribute such land; that the approach to section 23 should be from the standpoint of the main objective of the legislation, namely, fixing a ceiling and too much emphasis cannot be given to distribution; that the

(*To be continued*)

1. (1973) 1 M.L.J. 377.
2. (1973) 1 M.L.J. 410.

1. (1973) 2 M.L.J. 25.
2. (1973) 2 M.L.J. 95.

position under section 23 as it is worded for the moment, may be anomalous and may even lead to difficult situations; but that should not stand in the way of finding the true scope of section 23 and the Court is not entitled to fill up gaps in the section by visualising strange situations.

In *Subbiah Nadar* v. *Nallaperumal Pillai*[1], it is pointed out that in view of sections 2 (*aa*) and 2 (*ee*) of the Madras Cultivating Tenants Protection Act, 1955, the lessee has to establish that he has contributed his own physical labour or that of the members of his family in the cultivation of lands so as to become a cultivating tenant as defined in the Act; the onus is on the lessee to prove that he is a cultivating tenant entitled to the benefits of the Act; sub-letting being one of the acts by which the tenant could not by himself cultivate the lands, that will stand attracted by section 3 (2) (*b*); and the possession of the tenant of the demised properties even after the expiry of the lease period is entitled to protection. *Muniswamy* v. *Ramachandran*[2], decides that the word 'person' in section 4-A (5) covers not only a landlord who was not entitled to resume possession under the section on the date the Madras Cultivating Tenants Protection (Amendment) Act, 1966, came into force, but also a person who, not owning land on that date, nevertheless by purchase comes to own land thereafter; that the latter was not entitled to resume on the relevant date and by a subsequent change of circumstances, a purchaser could not clothe himself with the right to resume; that where a landlord did not suffer from the disability under section 4-A (4) but transferred a part of his holding to another the transferee not being a person entitled to resume on the relevant date could not be in a better position because of his purchase and this seems to be literally the effect of sub-section (5).

Insolvency Law :—

In the matter of *Madras Bangalore Transport Co.*[3], expresses the view that where the moneys deposited with a company by agents, employees and others as security deposits to fulfill their obligations were segregated and a separate ledger maintained, and there was absence of provision for payment of interest, and the agents' commission account was kept separate, such deposit amounts constituted trust moneys in the hands of the company entitling the depositors to claim priority in payment of the same over the other creditors of the company in insolvency. *Khadir* v. *Mahmoodunnissa Begum*[1], points out that even though there was no order revesting the properties in the insolvent after an absolute discharge order was made, by reason of the long delay and inaction of the Official Receiver and the creditors the properties of the insolvent would revest in the heirs of the insolvent and the contention that in the absence of any revesting order the insolvent loses his title to the properties is untenable.

Hindu Law and related legislation :—

In *Deivasigamani Udayar* v. *Rajarani Ammal*[2], it is held that the mere fact that section 18 of the Hindu Adoptions and Maintenance Act does not make any provision for granting *interim* maintenance in a suit for maintenance cannot negative a claim for *interim* maintenance and the civil Court has jurisdiction to grant such maintenance. *Madras State Bhoodan Yagna Board* v. *Athithan*[3], makes it clear that the manager of a Hindu joint family has no power to make a gift of joint family property for a charitable purpose; that the extent of the property gifted, whether it is reasonable or not cannot, therefore, arise for consideration and though under section 30 of the Hindu Succession Act a member of a Hindu joint family can make a will of his interest in joint family property the principle of the section cannot be extended to the case of a gift which is a transfer *inter vivos* and hence a gift by a manager of Hindu joint family property cannot be upheld by invoking the principle of the section even to the extent of his interest in the property. *Natarajan* v. *Rani Kannuthayi*[4], holds that the provisions of the Madras Impartible Estates Act, 1904, make it absolutely clear that the said Act does not deal with the

1. (1973) 1 M.L.J. 459.
2. (1973) 2 M.L.J. 207.
3. (1973) 1 M.L.J. 451.

1. (1973) 2 M.L.J. 36.
2. (1973) 1 M.L.J. 383.
3. (1973) 1 M.L.J. 176.
4. (1973) 2 M.L.J. 338.

impartible character of an estate at all but merely recognises the existence of the impartible character of the estates and on the basis of such recognition proceeds to make provisions for preserving the estates by imposing restraints on the power of alienation of the holders of the estates for the time being and providing for a right of maintenance in certain other persons. *Meyyappa Chettiar* v. *Shanmugham Chettiar*[1], makes it clear that where some co-owners claim title to a joint family property by ouster, they can succeed only by showing the particular point of time at which they asserted hostile title to the property in themselves to the knowledge of the other co-owners and had been in enjoyment of the property thereafter in their own right for a period of 12 years and more. *Ramudu Mudaliar* v. *Elammal*[2], expresses the view that when a family continues to be a joint family there is no reason why the purchase by a member at a revenue auction of a property should be exclusively for himself and not for and on behalf of the family and though it is open to a member to acquire property in his own name, the acquirer has to establish that the money for the purchase did not come from the joint family funds but was his own. In *Gopalan* v. *Commissioner of H. R. & C. E.*[3] the Supreme Court points out that the origin of the temple, the manner in which its affairs are managed, the nature and extent of the gifts received by it, the rights exercised by devotees in regard to worship therein, the consciousness of the manager and the devotees as to the public character of the temple are factors that go to establish whether a temple is public or private and the entire evidence, oral and documentary, has to be considered as a whole keeping in view the above principles. *Chinnammal* v. *Commissioner of H. R. & C. E.*[4], lays down that when the origin of a temple is known as a private temple the clearest possible evidence is necessary to show conversion of that temple into a public temple; the main characteristic of a public temple is that it is intended for the use of the public or a section thereof; the mere fact that outsiders are allowed to worship in the temple cannot necessarily mean that the temple was dedicated to the public, as no Hindu will ever prohibit strangers from offering worship to the deity enshrined in his private temple; in all such cases worship by outsiders is referable to the leave and license granted by the owner and cannot be indicative of any dedication to the public; in the absence of an express dedication for the benefit of the public, user by the public as of right must be established and such user as of right is far different from the trustees being willing to welcome the public to come and worship in the temple; and before a temple can come within the scope of the definition in section 6 (20) in the Madras Hindu Religious and Charitable Endowments Act, 1959, it must be shown that it is a place of public religious worship and has been dedicated for the benefit of the Hindu community or a section thereof or alternatively that it has been used as of right as a place of public religious worship by the Hindu community or a section thereof. *Raghavachari* v. *Narayana Iyengar*[1], states that where an ancient temple had fallen on evil days and a new temple was built on a new site and the *utsavar* idol of the old temple was installed, the *moolavar* idol not being found, the old temple site cannot be regarded as having lost its sanctity by reason of the installation of its *utsavar* idol in the newly built temple in the sense that no attempt can lawfully be made to renovate the old temple; that the fact that the *moolavar* idol was still apparently embedded in the site of the old temple and existed there was sufficient enough to justify the attempt by the villagers to renovate the old temple at the old site; that where the deed of dedication showed the intention of the dedicator to dedicate property only to the deity at the old site and he expected the temple to be renovated, the endowment could lawfully be utilised therefor and the question whether the deity at its old site had ceased to exist at such site so as to incapacitate the villagers from renovating it cannot be left to the final decision of the Deputy Commissioner under section 67 of the Hindu Religious and Charitable Endowments Act. *Seshan* v. *Venkataramanaswamy*[2], points

1. (1973) 1 M.L.J. 260.
2. (1973) 1 M.L.J. 388.
3. (1973) 1 M.L.J. (S.C.) 43.
4. (1973) 2 M.L.J. 442.

1. (1973) 1 M.L.J. 252.
2. (1973) 1 M.L.J. 422.

out that the production of a registered document effecting a transfer of property for pious and religious purposes is *prima facie* evidence of dedication and the onus lies on the party setting up the deed to be nominal to prove the fact. *Dr. H. T. Veera Reddi* v. *Kistamma*[1], decides that the Hindu Marriage Act is a special Act which has provided a special forum for the purpose of dealing with matrimonial causes and for payment of maintenance *pendente lite*; that a petition for restitution of conjugal rights is of wide amplitude wherein the defence that can be put forth in a suit for maintenance and the question whether maintenance is to be granted or not can be agitated more effectively and bindingly upon the parties; that a decision in such a petition will be a judgment *in rem*; that in view of the special jurisdiction conferred on the Special Court under the Act and in view of a judgment rendered by it being a judgment *in rem*, any prayer for a decision on the right to get maintenance in an ordinary civil Court will have no effect in the face of the decision rendered by the Court acting under the Act; that the Court regulates proceedings under the Hindu Marriage Act by the Code of Civil Procedure and, if necessary, it will have recourse to its inherent powers under section 151 of the Code on principles which are well-established; that the facts that a suit for maintenance had been filed by the wife against the husband in a civil Court prior in point of time to the petition for restitution of conjugal rights filed by the husband under the Hindu Marriage Act is no reason to refuse a prayer for an injunction to stay proceedings in the civil suit; and the fact that the Court which has to respect the injunction order issued by the Court under the Hindu Marriage Act is under the jurisdiction of another High Court cannot curtail the powers of the issuing Court under section 151 of the Civil Procedure Code. *Rama Rao* v. *Krishnamani Ammal*[2], expresses the view that clauses (1) and (2) of section 9 of the Hindu Marriage Act have to be read together, and so read, it becomes clear that its is incumbent upon the party applying for restitution of conjugal rights to prove

1. (1973) 1 M.L.J. 300.
2. (1973) 1 M.L.J. 203.

that the other party has, without reasonable excuse, withdrawn from the applicant's society. *Thanthoni Naicker* v. *Kuppammal*[1], states that all the persons coming within a particular entry in Class II of the Schedule to the Hindu Succession Act take the property equally as between themselves; that under section 11 of the Act the property shall be divided between the heirs specified in the entry so that they share equally; and that the expression "they share equally" will refer to the individual heirs and not to any particular group of heirs constituting as one unit. *Santhakumari* v. *Natarajan*[2], makes it clear that whatever was the position prior to the passing of the Hindu Minority and Guardianship Act, after the passing of that Act, the statutory position is that ordinarily the custody of a minor child below the age of 5 years should be with the mother in preference to the father; that after the passing of the Act, the question as to who the natural guardian is has to be determined as per provisions of the Act and not according to the Hindu Law before it was codified; and that unless there is something against the mother she should be in custody of the minor child if the child is below five years of age.

Evidence:—

In *Kuppuramulu* v. *Varadarajulu*[3], it is pointed out that oral evidence varying the terms of a written contract, for instance a promissory note is not admissible. *Ramachandra Gowder* v. *Nanjappa*[4] states that under section 110 of the Evidence Act, when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. *Balasubramania Nadalvar* v. *Saraboji Goundar*[5], lays down that a tenant, in order to claim title in himself, must first establish that he had surrendered the tenancy to the landlord and that without establishing the fact of surrender it is not open to the tenant to deny the title of the landlord and claim

1. (1973) 1 M.L.J. 25.
2. (1973) 2 M.L.J. 286.
3. (1973) 2 M.L.J. 108.
4. (1973) 1 M.L.J. 189.
5. (1973) 1 M.L.J. 248.

an adverse title from the mere fact of his continuing in possession.

Limitation:—

In *James* v. *Ponniah*[1], its pointed out that in the absence of any specific exclusion, sections 4 to 24 of the Limitation Act shall apply to applications and appeals under a special law unless there is any provision in the special enactment repugnant to such application. *Ramavel* v. *Pandyan Automobiles Pvt. Ltd.*[2], holds that in order to give a fresh start of limitation under the Limitation Act the payment should have been acknowledged by the person making the payment; if the payment towards the debt was made by the debtor himself, the writing required is the writing of the debtor; but if the payment is made through an authorised agent the acknowledgment in writing must be by the agent who actually paid the amount towards the debt; and the conditions laid down in the section will have to be strictly complied with and there is no question of its extension to any other category of acknowledgment. *Dhanalakshmi Ammal* v. *Ramaswamy Pillai*,[3] states that under the provisions of the Limitation Act of 1963, for an execution petition time begins to run only from the date of the decree and when execution petition is not filed within 12 years therefrom the petition clearly gets barred. *Rajamani Ammal* v. *Bhoorasami Padayachi*[4], points out that a document vitiated by undue influence is only voidable and not void *ab initio*; that if a release deed were held voidable the document has to be set aside within a period of three years under section 59 of the Limitation Act and a mere suit for declaration that the instrument is void and ineffective will not lie; and in cases where the instrument is voidable at the instance of a party, a suit to set aside or cancel the document must be filed within three years from the date of the document. *M. H. Moideen Madan* v. *M. I. Sahib Madani*[5], lays down that the suit contemplated both by Article 11-A of the Limitation Act of 1908, (*Cf.*, Article 98 of the Limitation Act of 1963) and Order 21, rule 103, of the Code of Civil Procedure, must be one for the establishment of the right which the plaintiff claims to present possession and that possession must relate to the property which was dealt with by the Court's order under Order 21, rule 98 or rule 101, Code of Civil Procedure; that the rationale behind the provisions is that once the question has been agitated and decided on investigation by the executing Court, that decision should be final unless a suit has been filed as contemplated by Order 21, rule 103 subject to the limitation prescribed in Article 11-A of the Limitation Act, 1908; and the result is that the right sought to be agitated and enforced must be identical.. *Ameeran Sahib v. Somanatha Nadar*[1], expresses the view that where a defendant has proved that notice has not been duly served inasmuch as the plaint copy was not sent with the notice, a petition filed by him immediately after he came to know of the passing of an *ex parte* decree against him is in time within Article 123 of the Limitation Act and the *ex parte* decree is liable to be set aside.

Civil Procedure Code:—

In *Velappa Goundar* v. *Nachimuthu Goundar*[2], it is held that where a reference made to the Court is one under section 30 of the Land Acquisition Act, for apportioning the compensation amount, when the same was disputed by the various parties, the order passed under such a reference is a decree within the definition of the term in section 2 (2) of the Civil Procedure Code and an appeal lies to the proper forum. *Kandasami Mudaliar* v. *Ranganathan*[3] states that the test for applicability of section 10 is to see whether the final decision in the previous suit would operate as *res judicata* in the subsequent suit and it is not necessary that the subject-matter and cause of action in the two suits should be identical. *Srinivasam Pillai* v. *Chellakumara Gounder*[4], expresses the view that an order of the Court staying a subsequently filed suit would be justified where the main question that had to be decided was

1. (1973) 2 M.L.J. 54.
2. (1973) 1 M.L.J. 286.
3. (1973) 1 M.L.J. 399.
4. (1973) 1 M.L.J. 400.
5. (1973) 2 M.L.J. 298.

1. (1973) 1 M.L.J. 255.
2. (1973) 1 M.L.J. 465.
3. (1973) 2 M.L.J. 94.
4. (1973) 1 M.L.J. 258.

whether a person was tenant or trespasser and the question was pending in the appeal against the decision in the earlier suit. *Dr. H. T. Veera Reddi* v. *Kistamma*[1], points out that the issue of maintenance for the wife in a petition for restitution of conjugal rights by the husband is not directly and substantially in issue in the suit for maintenance brought earlier by the wife in another Court and as such there is no scope for invoking section 10. *Rangaswamy Reddiar* v. *Jayalakshmi Ammal*[2], holds that, where an agreement made subsequent to a suit and prior to the decree therein was merely an understanding that the decree passed should not be executed, such an agreement can well be pleaded in bar of execution as it relates to the execution of the decree and is within the purview of section 47. *Arumugha Thevar* v. *Palaniammal*[3], lays down that a receiver appointed in execution under section 51 of the Code will be entitled to all the powers under Order 40, rule 1 of the Code and the administration of the estate by him will be governed by the provisions of Order 40 and by the principles which apply to a receiver appointed in ordinary suits and proceedings other than execution proceedings; the receiver does not for all purposes step into the shoes of the judgment-debtor or act as a representative of the decree-holder but he acts merely as an officer of Court and the fruits of the litigation realised by the receiver are subject to the control and supervision by the Court which appointed the receiver. *Veerappa Chettiar* v. *Palaniappa Chettiar*[4], states that in order to apply section 63 the same property of the judgment-debtor should have been attached by decree-holders in more than one Court; where an auction-purchaser purchased the property in execution proceedings and such sale has become absolute, the property shall be deemed to have vested in the purchaser under section 65 of the Code from the date when the property was sold and not from the date when the sale became absolute; and the attachment of the property, therefore, subsequent to the sale in execution by the decree-holder does not confer any

1. (1973) 1 M.L.J. 300.
2. (1973) 2 M.L.J. 1.
3. (1973) 1 M.L.J. 111.
4. (1973) 1 M.L.J. 316.

right on him. *Angu Pillai* v. *Kasiviswanatha Chettiar*[1], decides that the right of a judgment-debtor in the property concerned is, on the date of the attachment, qualified by the obligation incurred by him under an earlier contract to sell and the attaching creditor cannot ignore that obligation and proceed to bring the property to sale as if it remained the absolute property of the judgment-debtor and if the attachment was followed by a Court sale and the purchaser at such sale had no notice of the obligation he may get a good title and the promisee under the private contract would be left to seek his remedy against the promisor. *Veerappa Chettiar* v. *Palaniappa Chettiar*[2], points out that section 73 stands by itself and relates to distribution of assets, whether the property had been attached or not; that for the application of the section the property need not be attached but an application for the execution of the decree should have been taken in the Court which received and held the assets; that the section cannot be read as enabling all decree-holders who have taken execution applications in different Courts to claim rateable distribution of assets received and held in one Court; and for section 73 to apply (*i*) the decree-holder claiming rateable distribution should have applied for execution of his decree to the appropriate Court, (*ii*) such application should have been made prior to the receipt of assets by the Court, (*iii*) the assets of which rateable distribution is claimed must be assets held by the Court, (*iv*) the decree-holder should be the holder of a decree for the payment of money, and (*v*) such a decree should have been obtained against the same judgment-debtor. *Muthammal* v. *Jagadeesa Mudaliar*[3]. lays down that unless an appeal is specifically provided for from an order the only remedy is by way of revision. *Karunanidhi* v. *Renganathan Chettiar*[4], states that the jurisdiction of the High Court under section 115 of the Code is limited; such power cannot be used for the purpose of correcting errors of law or of fact except where the matter involves jurisdic-

1. (1973) 1 M.L.J. 334.
2. (1973) 1 M.L.J. 336.
3. (1973) 1 M.L.J. 283.
4. (1973) 1 M.L.J. 435.

tion and illegal exercise thereof by the Courts below and the exercise of discretion in granting a temporary injunction cannot be questioned in revision. *Nesamma Nadachi* v. *Paul Nadar*[1], expresses the view that in a revision under section 115 a mere question of law can in no sense be regarded as one involving jurisdiction. *Kesavan* v. *Vincent Pillai*[2], holds that, where though the two Courts below had held that there was wilful default yet the revision Court under section 25 of the Madras Buildings (Lease and Rent Control) Act had reversed the finding of fact without any valid ground, it is a clear case where that Court has acted illegally and it is the duty of the High Court under section 115 to correct such illegality. *Madhava Krishnan* v. *Thangaperumal*[3], points out that an adjudication between the parties which conclusively determined the rights of parties in respect of the extent of liabilities by ascertaining and determining the exact amount payable by one party to the other must be considered as an order enforceable and executable as a decree and an appeal alone will lie against the order and not a revision. *Dorairaj* v. *Viswanatha Rupa & Co*[4]. makes it clear that the inherent jurisdiction of the Court under section 151 cannot be resorted to when the aggrieved party has got a specific remedy available at law and where the proceeding by which the validity of certain orders passed by the Court after a certain date is challenged is not a collateral proceeding in which the appellant can call upon the Court to ignore the same but a direct proceeding under section 151, to challenge those orders and to have the appellant's position restored to that which he occupied before that date, an application under section 151 is incompetent. *Subbiah Devandran* v. *Kasamuthu Konar*[5], holds that the Court has ample powers to grant extension of time even if a petition is filed subsequent to the expiry of the stipulated period, but nevertheless it is purely in the discretion of the Court to decide whether to grant such an extension. *Parameswaran Tampi* v. *Mahadevan Pillai*[1], states that from the circumstance that the summons was refused, knowledge of the suit in which the summons was refused cannot be presumed; that since the summons was not duly served on the defendant in accordance with law and the procedure under Order 5, rule 17 had not been followed the defendant was entitled to have the *ex parte* decree passed against him set aside. *Govind Chetty* v. *Chinnappa Udayar*[2], decides that, where in a suit for recovery of money an amendment of the plaint was sought based on facts set out already in the plaint, such amendment may be allowed. *Sattiapal* v. *Pandiyan Brick Works*[3], makes it clear that to determine whether a plea in the written statement is a set-off or a mere defence, one has to consider the entire plea and not merely a particular portion of the plea; that the plea of the defendant would amount to a set-off only if the plaint claim as well as the claim in the written statement could stand together, in other words, only when the plaintiff was entitled to recover the suit claim the question of set-off would arise; if, on the plea taken by the defendant, the suit claim itself was to be negatived on the defendant establishing the plea, then there would be no question of set-off. *S. S. Harbhagwandas* v. *Indian Bank Ltd.*[4] holds that the object of Order 8-A of the Code is to prevent the same question being tried twice over, where there is a substantial question common as between the plaintiff and the defendant in the action and as between the plaintiff and a third person; that in such a case the third person is impleaded as a party to the proceedings so as to bind him by the decision on the question that is raised; that if the decision on the claim by the plaintiff is likely to be unduly prolonged and thereby there would be considerable delay in the plaintiff obtaining relief the Court would be hesitant to implead third parties as parties to the suit; that the provisions of Order 8-A are based on rules relating to third party procedure embodied in Order 5-A of the Madras High Court Original Side Rules

1. (1973) 1 M.L.J. 63.
2. (1973) 1 M.L.J. 406.
3. (1973) 1 M.L.J. 277.
4. (1973) 1 M.L.J. 394.
5. (1973) 2 M.L.J. 15.

1. (1973) 1 M.L.J. 282.
2. (1973) 2 M.L.J. 20.
3. (1973) 2 M.L.J. 281.
4. (1973) 1 M.L.J. 431.

and their object is to avoid multiplicity of suits and the possibility of conflicting decisions being rendered with reference to the same subject-matter in different suits; that before granting permission for impleading third parties as parties to the suit, the interests of the plaintiff should be taken note of; that while the Court will not be justified in refusing to give leave to implead third parties as parties to the suit merely on the ground that the plaintiff will be inconvenienced thereby, at the same time, if, by impleading third parties the plaintiff is considerably prejudiced or delayed in his relief unduly the Court will not resort to third party procedure. *Sivasankara Pillai* v. *Ponnuswamy Nadar*[1] points out that Order 26, rule 17 of the Code does not generally attract the entire provisions of Order 18 relating to examination of witnesses to the proceedings before a Commissioner; that it only makes the provisions applicable to "the person required to give evidence" and for purposes of the Rule the Commissioner shall be deemed to be a civil Court; and that the Commissioner has not been made a Judge for the purposes of examining the witnesses, and the duties of the Judge under rules 5 and 6 of Order 18 are not attracted under Order 26, rule 17. *Nagoor Rowther* v. *Abdul Rahim*[2], makes it clear that symbolical possession is given only in cases where the party in actual possession is entitled to remain in such possession as in the case of delivery under Order 21, rule 96 of the Code, and should not be confounded with cases where a party is entitled to actual possession but obtains only what is called a paper delivery. *Sivathi Ammal* v. *Arulayee Ammal*[3], expresses the view that Order 21, rule 72 of the Code and rule 199, Civil Rules of Practice safeguard the interests of the judgment-debtor; that the Court itself is bound to consider the facts of the case and grant permission to the decree-holder to bid or purchase the property; that in doing so, the Court will have to be satisfied that unless permission is granted to the decree-holder an advantageous sale cannot otherwise be had; that conditions that are not laid down in the Civil Procedure Code or in the Civil Rules of Practice cannot be insisted upon when the requirements of the law satisfied; that where after exercising caution and satisfying itself that it would be advantageous to the judgment-debtor to grant permission to the decree-holder to bid and set-off such permission is granted, a sale should not be found to be illegal merely because the decree-holder had been given permission to bid and set-off on the first occasion itself; that where there were no bidders on the first occasion and leave was given on the second occasion after taking into account the adequacy of the upset price fixed and after giving notice to the judgment-debtor and hearing him there is in law nothing illegal in granting leave to the decree-holder to bid and set-off; and that where the bid was ordered to be begun at Rs. 10,000 which was the value given by the judgment-debtor in the execution petition but the property was sold with the upset price fixed at Rs. 8000 and the property was knocked down at that price in favour of the decree-holder and the upset price had been reduced to Rs. 8,000 without notice to the judgment-debtor the sale cannot stand. *Soma Veerappa* v. *Muthurasappa*[1], lays down that what passes to the purchaser of shares in a company at a Court sale is the beneficial interest in the shares sold, and that interest passes even though the company has discretion to recognise the purchaser as a shareholder or not; and, there is nothing in Order 21, rule 79 to indicate that the title of the auction-purchaser to the shares purchased by him will stand perfected only after the recognition of the transfer and registration of the same by the company. *Sundaram Chettiar* v. *Mangai Achi*[2], decides that in execution of a mortgage decree the Court while exercising its jurisdiction under the first proviso to Order 21, rule 90 of the Code need not invariably and in all cases call for the security or deposit for the totality of the amount in the sale warrant; that when the value of the hypotheca as ascertained by the Court is sufficiently high and the price secured in the public sale is considerably low, the Court in the exercise of its discretion is not precluded from relaxing

1. (1973) 2 M.L.J. 127.
2. (1973) 1 M.L.J. 198.
3. (1973) 2 M.L.J. 321.

1. (1973) 2 M.L.J. 58.
2. (1973) 1 M.L.J. 160.

the rigidity of the call for security or deposit for the entire amount shown in the sale warrant or that realised by the sale; that the scope for the exercise of such discretion is not ruled out because of the saving element provided in the second proviso; that in view of the terms of the second proviso in the case of a mortgage decree the Court can easily find out the extent of the anticipated deficit, and in case it finds on inquiry the limits of such a deficit it can quantify the same and call upon the judgment-debtor to furnish security for the amount or deposit the same to cover the apprehended loss; that when the Court is satisfied that the value of the hypotheca is high and the justice of the case required that the security or deposit need not be called for, then it would be in order to dispense with the same entirely or after enquiry quantify the anticipated loss and call for security for such a reckoned amount. *Muthuswamy* v. *Venugopalan*[1] states that if a decree is joint against several defendants and if the decree has become final so far as one defendant is concerned on account of abatement on his death, the appeal by the other defendants should reasonably be held to be not maintainable because the success of the appeal would lead to the Court coming to a decision which would be inconsistent with the decision between the deceased appellant and the respondent and that would lead to the Court passing a decree contrary to a decree which has already become final in respect of the same subject-matter between the deceased appellant and the respondent; and that where a decree was a joint decree against two defendants with regard to the main reliefs, one relating to injunction and the other relating to damages, and the liability of the defendants was not apportioned, and pending appeal by both of them one of them died and the appeal had abated and the decree had become final in regard to that defendant and the plaintiff, the appeal even by the surviving defendant cannot be proceeded with. *Petha Padayachi* v. *Ramalinga Padayachi*[2], makes it clear that normally negligence in order to be a ground for the avoidance of a decree must be of such a nature as to justify the inference that the minor's interests were not at all protected and therefore he was not properly represented; that negligence must not be merely such as might innocently be committed even by a reasonable person taking the ordinary precautions which the guardian would have taken in his own case; and that where the negligence is so gross as to amount to a clear violation of the duty cast upon the guardian although not brought to the notice of the Court at the time, the decree can be avoided. *Muthammal* v. *Jagadeesa Mudaliar*[1], expresses the view that refusal of leave to sue *in forma pauperis* is but an order not having the force of a decree and merely because while declining leave the Court gave time, that would not have the effect of converting the application for leave to sue *in forma pauperis* into one of an order on a plaint, so as to consider it as a case of an order rejecting the plaint. *Vadivel Mudaliar* v. *Pachanna Goundar*[2], states that in the matter of granting temporary injunction the Court must take into consideration the affidavits and the relevant documents and a mere reference to the same in the judgment is no good but there must be some discussion about them before any conclusion is arrived at. *Dr. H. T. Veera Reddi* v. *Kistamma*[3], states that the Court has power both under Order 39, rules 1 and 2 and section 151 of the Code to grant an injunction restraining a party in a proceeding before it from proceeding with a suit filed in a different Court, and, in the interests of justice, to avert abuse of the process of Court an injunction can be granted by the Court apart from its powers under Order 39, rules 1 and 2 under section 151. *Karunanidhi* v. *Ranganathan Chettiar*[4], lays down that in granting a temporary injunction the Courts must use their judicial discretion; it is absolutely unnecessary to discuss the evidence on record elaborately but there must be a *prima facie* ground which has to be made out by the party seeking the injunction and the burden is not upon the person who objects to such grant. *Mangai Achi* v. *Asokan*[5], points out that

1. (1973) 1 M.L.J. 351.
2. (1973) 2 M.L.J. 310.

1. (1973) 1 M.L.J. 283.
2. (1973) 2 M.L.J. 452.
3. (1973) 1 M.L.J. 300.
4. (1973) 1 M.L.J. 435.
5. (1973) 1 M.L.J. 128.

there is nothing in Order 39, rule 4 which interdicts an appeal being preferred against an order of *ex parte* injunction under Order 43, rule 1 (*r*). *Rajappan* v. *Natesan*[1], expresses the view that in the absence of a finding by the appellate Court that without the help of the evidence tendered in the appellate Court it could not pronounce a satisfactory judgment on the evidence available and there is no substantial cause, the reception of the additional evidence has to be considered under Order 41, rule 27 (1) (*b*) of the Code and not under rule 27 (1) (*c*); that reception of additional evidence in appeal will not justify an order of remand; and the appellate Court will have to keep the appeal on file and dispose it of, after taking the additional evidence either itself or directing the trial Court to take additional evidence under Order 41, rule 28 of the Code. *Peria Swamiyar* v. *Arudesom Panchayat*[2], holds that by reason of Order 42, rule 1 of the Code, Order 41, rule 33 applies to second appeals; that the discretion conferred by rule 33 is very wide but as the power is in derogation of the general principle that a party cannot avoid a decree against him without filing an appeal or cross-objection, it must be exercised with due care and caution; that where a decree was prayed for against four persons but was granted against one of them alone and the judgment-debtor filed an appeal against the plaintiff only leaving out the other parties and the decree was substantially confirmed by the appellate Court, whereupon the judgment-debtor filed a second appeal against the party to the High Court, the provisions of Order 41, rule 33 can be invoked and all the parties brought before the Court, so that in case the appellant got rid of his liability under the decree, the plaintiff in the circumstances of the case, should not go remediless and a proper decree could be passed in favour of the plaintiff against others whom the Court considers liable. *Kolandaswami Goundar* v. *K. M. Chandran*[3]. states that Order 47, rule 1 of the Code is wide enough and definitely an aggrieved party has the right to have a petition for reviewing the order passed by the Court below; and that where the Advocate had taken the mistake on himself (that he had noted the date wrongly with the result that the case was called and dismissed) it is but fair that the party should not be made to suffer because of some mistake that had occurred in noting down the date mentioned in the order: *Valliammal* v. *Authorised Officer*[1], expresses the view that a mistake or error within the meaning of the provision in Order 47, rule 1 of the Code is not confined to mistake or error of facts and even on a mistake or error of law, if apparent on the face of the record, an order is liable to be reviewed.

1. (1973) 2 M.L.J. 107.
2. (1973) 2 M.L.J. 461.
3. (1973) 2 M.L.J. 359.

Penal Code:

In *K.M. Thomas*, In re[2]. it is pointed out that the legal conception of insanity differs considerably from the medical conception of insanity and in order to escape the charge the accused must show that he was of unsound mind at the time he committed the act and not merely before or after the act and that, as a result of unsoundness of mind, he was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law; that insanity to absolve a person from all criminal responsibilities must have affected his cognitive faculties and not merely his emotion or will leaving his cognitive faculties substantially unimpaired, that any mental aberration short of complete damage to the cognitive faculties will not constitute an excuse under the Penal Code; that the fact that his behaviour was queer, that his mental ailment had rendered his intellect weak or that he was liable to recurring fits of insanity at short intervals will not do; that where previous insanity is proved the Court has to weigh all the circumstances carefully before coming to a conclusion as to whether the accused did or did not at the time of the commission of the offence know that he had committed a crime; the Court will consider whether he had any motive to commit the offence, whether the act was accompanied by manifestations of unnatural and fiendish brutality, whether the act was committed

1. (1973) 1 M.L.J. 377.
2. (1973) 1 M.L.J. 189.

openly or in a manner which showed a desire to concealment, whether he showed consciousness of his guilt by acts like running away from the scene, whether he made efforts to avoid detection by destroying evidence of the crime by concealing the weapon of attack or the body of his victim and whether he offered false excuses and made false statements when arrested; that it will, however be unwise for the Court to infer insanity solely by relying upon one or more of such circumstances particularly when they are compatible with acts of revenge. *Sreerangayee, In re*[1], states that where the confessional statement of an accused was in conformity with the medical opinion and the commission of the offence was admitted, no justification for the offence on the ground of poverty can be accepted; poverty cannot justify commission of grave offences though the harrowing circumstances in which the offence was committed may be relevant in awarding of sentence. *Pandurangam*, In re[2]. decides that when an accused obtains an Income-tax clearance certificate from the Income-tax Officer by filing before him a false affidavit he commits an offence under section 420, Penal Code, *i.e.*, cheating and dishonestly inducing delivery of property.

Criminal Procedure Code:

In *Indian Express* v. *Chief Presidency Magistrate*[3], the Court points out that the Criminal Procedure Code, is not concerned with the personality of the person who lays the first information report and it is only concerned with the quality of the information and the provisions of the Code provide ample safeguards for a fair investigation to be carried on. *Sethurathinam Pillai* v. *Barbara*[4], expresses the view that the essential condition requisite for claiming maintenance and continuing to claim maintenance by a wife is to maintain her status as the wife; that when once a competent civil Court has declared that there was no marriage between the concerned parties their relationship as husband and wife, if any, was severed by that decision and from the date of that judgment, subject to the decision in appeal, she ceased to be the wife; hence during such period an order of maintenance passed under section 488, Criminal Procedure Code, could not be enforced. *Krishnammal* v. *Mahadeva Iyer*[1], lays down that a civil Court has no jurisdiction to set aside or vary an order passed by the Criminal Court under section 488, though once a competent civil Court gives a decision upon the liability for maintenance or the quantum thereof, the criminal Court is statutorily bound under section 489 (2) to cancel or vary its own order in accordance with the decision of the civil Court. *Abdul Hadi* v. *Maju Bi*[2], makes it clear that the object of section 522 of the Criminal Procedure Code, is to prevent any person gaining wrongful possession of land by his own unlawful and forcible acts.

1. (1973) 1 M.L.J. 231.
2. (1973) 1 M.L.J. 22.
3. (1973) 2 M.L.J. 469.
4. (1973) 2 M.L.J. 386.

1. (1973) 1 M.L.J. 344.
2. (1973) 1 M.L.J. 13.